
**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
RIVERWALK OF HAYESVILLE**

RECITALS

A. Declarant is the owner of certain real property in Clay County, North Carolina, comprising a subdivision to be known as **RIVERWALK OF HAYESVILLE** as shown on a plat recorded in Plat Cabinet 4 at Slide 1298 and in the Clay County Public Registry (“Phase 1”) containing 15.419 acres, as described in Exhibit “A”.

B. Declarant owns or may acquire in the future certain real property in Clay County, North Carolina, located adjacent to Phase 1. Declarant may, in its sole discretion and without obligation, by one or more supplemental filings pursuant to Article 16 hereof, make all or any portion of the Additional Land (as herein defined) subject to this Declaration and part of the Project (as defined in Section 1.23 hereof. The provisions of Article 16 hereof must be strictly complied with by Declarant in order to make all or any portion of the Additional Land subject to the Declaration and part of this Project. No act or acts of Declarant, including the recordation of a plat or plat indicating units included in the subdivision, shall be taken to imply, or be construed as, subjecting the additional land to this Declaration and shall not constitute a common plan and scheme of development until strict compliance with Article 16 has been effected by Declarant. Declarant intends to improve the Project as a planned residential development by dividing the Project into Units appropriate for single-family detached dwellings or single-family town homes with deeded units.

C. Declarant intends to develop Phase 1 under a common scheme and general plan for the improvement and maintenance of Phase 1 and, to the extent determined by Declarant from time to time in the future, all or any part of the Additional Land as a community for Adults, age 55 and over, under the Fair Housing Act (Title VII of the Civil Rights Act of 1968, as amended 42 U.S.C 3601-3619) and the Housing for Older Persons Act of 1995 (Rule L. 104-76 Stat. 787).

D. For this purpose Declarant intends to subject Phase 1 (and so much of the Additional Land as shall, from time to time, be annexed to the Project in accordance with the provisions of this Declaration) to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Project and the future owners thereof.

E. Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Riverwalk of Hayesville Property Owners Association, Inc. as a non-profit corporation under the laws of the State of North Carolina for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant hereby declares as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

1.01. Additional Land. “Additional Land” means the real property described in Exhibit “A” attached hereto and the land that adjoins the boundaries thereof or whose boundary is within 1,000 feet of any boundary line of the property described in Exhibits A and B, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 16 hereof.

1.02. Appraisal. “Appraisal” means an appraisal by a member of the Appraisal Institute of the National Association of Real Estate Boards (or, if such Institute is not then in existence, a like organization).

1.03. Articles. “Articles” means the Articles of Incorporation of the Association, including any amendments thereto.

1.04. Association. “Association” means Riverwalk of Hayesville Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns, which is an age 55 or older housing community under the Fair Housing Act (Title VII of the Civil Rights Act of 1968, as amended 42 U.S.C 3601-3619) and the Housing for Older Persons Act of 1995 (Rule L. 104-76 Stat. 787).

1.05. Board. “Board” means the Board of Directors of the Association.

1.06. Builder. “Builder” means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Units and construct homes for sale in the Project, including, but not limited to, Tighe White Construction, Inc.

1.07. Bylaws. “Bylaws” mean the Bylaws of the Association, including any amendments thereto.

1.08. City. “City” means the City of Hayesville in Clay County, North Carolina.

1.09. Common Area. “Common Area” means all real property owned by the Association for the common use and enjoyment of its Members, including the Recreational Common Area when conveyed to the Association, but does not include real property over which the Association has only an easement.

1.10. Completion of Sales. “Completion of Sales” means the earlier of (1) conveyance of all portions of the Property to purchasers other than a successor Declarant hereunder or (2) expiration of the later of (i) twenty (20) years from the closing of the first sale of a Unit to a purchaser other than a Builder or a successor Declarant hereunder or (ii) five (5) years from the conveyance of the first Unit in the Phase most recently made subject to this Declaration to a purchaser other than a Builder or a successor Declarant hereunder; provided, however, if Declarant is delayed in developing the Project, constructing improvements or selling Units and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power, or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant’s reasonable control, said twenty (20) year period shall be extended by the period of any such delay.

1.11. County. “County” means Clay County in the State of North Carolina.

1.12. Declarant. “Declarant” means Riverwalk of Hayesville, LLC, a North Carolina Limited Liability Company, and any successor or assign to whom Declarant assigns its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

1.13. Declaration. “Declaration” means this Declaration and all amendments or supplements hereto.

1.14. Member. “Member” means a member of the Association.

1.15. Mortgage. “Mortgage” means a mortgage or deed of trust which constitutes a first lien upon a Unit given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Unit.

1.16. Mortgagee. “Mortgagee” means the holder of the beneficial interest in any Mortgage.

1.17. Notice and Opportunity for Hearing. “Notice and Opportunity for Hearing” means giving at least fifteen (15) days’ prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.18. Owner. “Owner” means the record owner, whether one or more persons or entities, of a fee simple title to any Unit, and shall include Declarant and Builder as to any Unit owned by Declarant or Builder unless otherwise qualified herein. “Owner” shall not include any person or entity who holds an interest in a Unit merely as security for the performance of an obligation or as a tenant.

1.19. Person. “Person” means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.20. Phase. “Phase” means each of Phase 1 and all the real property covered by a Supplemental Declaration recorded pursuant to Section 16.02 of this Declaration.

1.21. Phase 1. “Phase 1” means the real estate which comprises a total of 15.419 acres, more or less, and is shown on plats recorded in Plat Cabinet 4 at Slide 1298 in the Clay County Public Registry and is more particularly described in Exhibit “A”.

1.22. Project. “Project” means the planned development known as Riverwalk of Hayesville which shall be developed and constructed on part or all of the Property, consisting of Phase 1 and any additional Phases of real property but only to the extent made subject to this Declaration by recordation of a Supplemental Declaration pursuant to Section 16.02 of this Declaration.

1.23. Property. “Property” means collectively Phase 1 and the Additional Land.

1.24. Recreational Common Area. “Recreational Common Area” means that portion of the Project which Declarant will complete and convey or cause to be conveyed to the Association for the common use and enjoyment of its Members as recreational land, together with any and all improvements constructed thereon, including, but not limited to a swimming pool, parking lot, picnic areas and trails.

1.25. Rules and Regulations. “Rules and Regulations” means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

1.26. Substantial Completion. “Substantial Completion” means that the improvement in question has been constructed in such a manner that it can be used for its intended purpose.

1.27. Supplemental Declaration. “Supplemental Declaration” means a supplemental declaration of covenants, conditions and restrictions, which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, to the Project and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration.

1.28 Townhouse. “Townhouse” and “Unit” are used interchangeably throughout this declaration to mean any numbered single family units(s) to be constructed by Declarant or Builder on portions of the Properties described in Exhibit A and may include attached single family dwelling units with common party walls and/or unattached Townhouses.

1.29. Unit. “Unit” means any numbered single family Unit or Townhouse, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Project or a part thereof, which is not a dedicated street or Common Area.

1.29. Voting Power. “Voting Power,” means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Project.

ARTICLE 2

SUBMISSION AND TERM

2.01. Submission. The Project shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (i) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Project and (ii) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Project. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Project, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Project, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.02. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Unit is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

2.03. Term. This Declaration shall remain in force for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless sooner terminated by the affirmative vote of seventy-five percent (75%) of the total Voting Power of the Association.

ARTICLE 3

COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident or tenant of a Unit shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then, the provisions of the Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Project is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Project, then the provisions of this Declaration shall prevail.

ARTICLE 4

PROPERTY RIGHTS

4.01 Conveyance of Townhouses. Each Owner shall be conveyed a fee simple title only to the actual ground upon which the completed unit is situated. In the event the completed unit is attached to another unit, then the Owner shall be conveyed a fee simple title only to the actual ground upon which his completed unit is situated, together with one-half of the party wall separating two or more Townhouses.

4.02 Right of Enjoyment. Each Owner shall have exclusive use of the area immediately surrounding the Unit subject only to those utility easements reserved unto the Declarant and/or the Association as defined in sections 4.05 and 4.06 below and subject to the maintenance and lawn care which shall be the responsibility of the Association unless the Owner encloses said area with a privacy fence. In the event the Owner encloses said area with a privacy fence, Owner shall be responsible for the maintenance and lawn care within the area fenced.

4.03 Common Area Easements. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and of access to and from his Unit over any streets comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to his Unit and subject to the following rights and restrictions:

(A) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable admission and other fees for the use of the Recreational Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Project.

(B) The right of the Association to suspend the right of an Owner to use the Recreational Common Area facilities (1) for any period during which a fine against a Member or any assessment against such Owner's Unit remains unpaid; and, (2) after Notice and Opportunity for Hearing, for a period not to exceed ninety (90) days for any infraction of the Rules and Regulations;

(C) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Area as provided in this Declaration;

(D) The right of the Association to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes, subject to the approval of Members and Mortgagees as otherwise provided in this Declaration;

(E) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area; and

(F) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant or any successor Declarant.

4.04. Tenants.

(A) Any Owner who rents or leases his Unit to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area during the period the Unit is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Unit and no more than one family related by blood or marriage shall live in any one Unit. Except as provided in Section 7.19, the Units shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Units, to others who are age 55 and older, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

(C) In the event an Owner shall rent or lease his Unit such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Unit rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement;
- (4) evidence that tenant(s) are 55 years of age or older; and
- (5) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement. Tenant should not be allowed to use recreational facilities.

4.05. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Unit and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Units for the flow of rainwater from gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Unit. If any Common Area or Unit encroaches upon a Unit because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed, reconstructed or repaired in accordance with the provisions of this Declaration, including a driveway, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Unit or between Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall such an easement exist for willful encroachments. If any Unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.06. Utility Easements. A perpetual easement is reserved over the rear ten (10) feet and side five (5) feet of each Unit and as shown on all recorded subdivision maps of the Project for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage. All easements for

installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final subdivision map of the Project or created in some other way and extend over the rear ten (10) feet and each side five (5) feet of every Unit shall be kept free of buildings, and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Any portion of a Unit which shares a berm with the Common Area shall be subject to an easement in favor of the Association for landscaping, mowing and maintenance of the berm. All such easements at all times shall be accessible to Declarant until the Project is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. The easement area for each Unit and all improvements in it shall be maintained continuously by the Owner of such Unit, except for those improvements for which a public (or quasi-public) authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over unsold Unit(s) for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

4.07. No Subdivision of Units; No Time-Sharing. There shall be no further subdivision or partition of any Unit nor shall any Owner or any other person acquiring any interest in a Unit seek any partition or subdivision thereof. There shall be no time-sharing or other co-ownership, which allows multiple Owners sequential possessory interests in a Unit.

4.08. **Sale of Common Area.** Except as otherwise provided in this Declaration, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association, without the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members [other than Declarant].

4.09. Rules and Regulations. The Board shall have the right to write, amend, supplement, adopt, publish and enforce Rules and Regulations governing the Project, the use and enjoyment of the Common Area, the Recreational Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. The Members may amend any such Rules and Regulations adopted by the Board at any regular or special meeting of Members called for such purpose by (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant or Builder (or have an adverse impact on Declarant or Builder or upon the sale of Units or the construction of improvements thereon), and must be consistent with this Declaration, the articles and the Bylaws.

4.10. Enforcement. The Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (i) the Member shall have been warned in writing of a previous infraction within the preceding one (1) year, and (ii) the fine conforms to the provisions of Section 9.11.

4.11. **Recreational Common Area.** The Recreational Common Area facilities shall include a swimming pool, parking lot, picnic areas and trails and shall be located on a portion of the Common Area to be owned by the Association. Provided Declarant gives its written consent, the Board may extend licenses to non-Members to use the swimming pool for a reasonable fee for such periods as the Board determines to offset the Association's costs in maintaining and operating the swimming pool, including the swimming recreational building and kitchen facilities within the building.

Annual assessments shall commence in accordance with Section 9.09; provided

however, there shall be no annual assessments allocated for the swimming pool on the Common Area. Annual dues for the swimming pool for each Owner shall commence to be paid as provided in Section 9.05.

Upon acquisition of record title to a Unit from Declarant or Builder, each Owner other than Declarant or Builder shall contribute to the capital of the Association an amount equal to one-fifth (1/5th) of the amount of the annual assessment for that Unit as determined by the Board, such contributions to be used by the Association for the maintenance, repair and replacement of the Recreational Common Area.

The Board may appoint a pool, grounds or any other committee it so desires composed of one or more members of the Board and one or more Members of the Association to recommend procedures, rules and regulations to the Board for the operation and use of said facilities.

ARTICLE 5

COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES

5.01. Dedications. The Association shall have the power to grant easements in, on, over, through, and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Unit and (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Unit. If ingress or egress to any Unit is through the Common Area, any conveyance or encumbrance of such Common Area is subject to said Unit Owner's easement. Each Owner, by accepting a deed to a Unit, expressly grants to the Association an irrevocable power of attorney for the purpose of granting easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members [other than Declarant].

ARTICLE 6

COMMON AREA AND UNIT MAINTENANCE

6.01. Maintenance by Association. The Association shall repair and maintain the Common Area including the Recreational Common Area and any improvements, utilities and facilities located on the Common Area. The Association's maintenance obligation shall arise upon the filing with the Association by Declarant of a notice of completion of Common Area improvements, or any portion thereof, and the commencement of annual assessments against the Owners. The Association shall maintain and repair all signage, irrigation facilities, lighting and landscaping that may be installed on or within public street medians throughout the Project.

The Association may contract with the local electrical power utility for the installation and thereafter-continuous operation of decorative streetlights to be located within the public streets in the Project and such fees charged by the utility shall be paid from the annual assessments.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhouse, which is subject to assessment hereunder, as follows: Paint repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not include glass surfaces and each Owner shall be required to maintain his own glass. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Townhouse at all reasonable times to perform maintenance as provided in this article. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance, replacement, or repairs incurred by the Association shall be added to and become a part of the assessment to which such Townhouse is subject.

6.02. Maintenance by Owners. Each Owner shall maintain, repair and replace at his expense, all interior portions of the improvements in his Townhouse which shall need repair. Further, each Owner shall repair, maintain and replace, at his own expense when necessary, the heating and air conditions systems servicing his dwelling, whether located in his Townhouse or in the Common Area adjacent to same. In the event Owner wishes to place a privacy fence around his Townhouse, then he will be responsible for the maintenance and upkeep of the grounds within his fencing.

No building or other structure shall be placed or permitted to remain on any Unit which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Units or Common Area as established in connection with the approval of the subdivision map or maps applicable to the Project by the County, except to the extent such alteration in drainage pattern is approved in writing by the Association and all public (or quasi-public) authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until the Project is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing the approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

6.03. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

6.04. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Unit when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Unit subject to such right of access of the Association or its agents.

ARTICLE 7

USE RESTRICTIONS

In addition to the restrictions set forth in Article 14 below, the following apply to

the Project:

7.01. Residential Use. Except as otherwise provided in this Declaration, each Unit shall be used solely for the construction and occupancy of a residence for a single family and for no other purpose. Except as provided in Section 7.19, no Owner shall use or cause or permit his Unit to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. No structure shall be erected, altered, placed or permitted to remain on any Unit exceeding two (2) stories in height, and a private garage for not more than two (2) cars and No other outbuildings incidental to residential use of the Unit or otherwise are permitted to be built.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Unit or in any other part of the Project. Nothing shall be done within the Project that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Project, or that unreasonably interferes with the quiet enjoyment of occupants of Units. No doorways, walkways or streets shall be obstructed in any manner, which would interfere with there use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Parking. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any undesignated part of the Common Area, (b) in any driveway or (c) on any other part of a Unit, (d) or otherwise in the Project unless the same are fully enclosed within the garage located on the Unit. Any such vehicle shall be parked, stored or left wholly within the garage located upon the Unit, except to the extent same is already occupied to capacity, in which case such vehicle may be parked temporarily in the driveway once during any calendar month for not more than 24 consecutive hours. This restriction shall not apply to sales trailers, construction trailers, or other vehicles, which may be used by Declarant and its agents and contractors in the conduct of their business prior to Completion of Sales. No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Project. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Project, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Unit outside an enclosed structure. No automobile shall be parked on the street or behind the unit.

Any Unit owner that has a function where more than two automobiles have to be accommodated, the automobiles must be parked at the community center or the function must take place at the community center for ample parking.

7.04. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no Owner shall display, hang, store or use any signs, curtains, draperies, shades, stained glass or other articles whatsoever outside of the dwelling on any Unit so as to be visible from outside the Unit, excluding seasonal decorations and as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Unit for sale or rent may be placed by the Owner on his Unit in such manner that it will be visible from outside the Unit. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Units.

7.05. Antennas and Dishes. No radio or television transmission or reception towers, antennas, dishes or disks shall be erected on any Unit except if an owner desires to have a satellite dish placed on the unit, only one satellite dish may be placed on the unit and the satellite dish shall measure no greater than 16" in diameter

7.06. Laundry. No laundry or wash shall be dried or hung upon the exterior of any Unit.

7.07. Fences. No fence or wall shall be erected on any Unit closer to the street than the side street setback or the front of the building facade except for temporary

decorative fencing installed by the builder on a model home. No fence or wall shall be erected on any berm of dirt, which was placed along the side or rear Unit line of any Unit by the Declarant. Privacy fencing around patios or decks is not to exceed six (6) feet in height may be erected only with the prior approval of the Board or the architectural control committee. Perimeter fencing shall be beige color and vinyl picket fence only, measuring no more than six (6) feet in height. Any other fencing, including chain link or other type of metal fencing, is expressly prohibited. Declarant, during any period in which a two-class voting structure is in effect, or the Board, when Declarant's Class B Membership terminates, may, with the prior written approval of the architectural control committee, install privacy fencing around the exterior boundary of the subdivision for aesthetic purposes, which privacy fencing shall not exceed six (6) feet in height.

7.08. Pets.

(A) No animals shall be raised, bred or kept on any Unit or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed two (2) in number except for newborn offspring of such household pets, which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Project.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and those Owners are responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Project at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(A).

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Unit or the Common Area. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Unit or any portion of the Project which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Occupants of any property in such vicinity. Grass, hedges, shrubs, vines and mass planting of any type on any Unit or any portion of the Project shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants, which die, shall be promptly removed. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Unit in the manner provided by this Section 7.09 the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Unit at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement of the cost therefore as provided in Section 9.07.

7.10. Nuisance. No noxious or offensive activity shall be carried on in or upon any Unit or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Project or unreasonably interferes with the quiet enjoyment of occupants of Units. No Owner shall permit anything to be done or kept on his Unit which would result in the cancellation of insurance on any other residence or any part of the Common Area or

which would be in violation of any law.

7.11. Building Setbacks. No building shall be erected on any Unit nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Unit no residence or other building shall be located nearer than the distance shown on the recorded map to the side street line. With respect to corner Units, the front Unit line shall be deemed the street line having the significantly shorter frontage, and any residence erected on such corner Unit shall face the front Unit line. Setbacks will comply with Clay County Ordinance & Town of Hayesville Ordinance. No building, including a residence, shall be located nearer than ten (10) feet to any side Unit line or twenty (20) feet to any rear Unit line. Provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure on a Unit upon any easement shown on the recorded plat or reserved herein or upon any other Unit. This provision shall also not be construed to authorize any violation of the zoning provisions of the appropriate governmental authority.

7.12. Temporary Structures. Except as provided in Section 7.19, no residence of a temporary nature shall be erected or allowed to remain on any Unit, and no boat, truck, trailer, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Unit, either temporarily or permanently.

7.13. Floor Space. The floor area of each home constructed upon a Unit shall be not less than one thousand (1,000) heated square feet; provided, however, that the aforesaid square footage requirement shall be based on interior floor space, exclusive of basements, garages, porches, decks, balconies and overhangs.

7.14. Accessory Structures. No metal carport, free standing metal garage, free standing metal utility building or other accessory structure shall be erected at any Unit or attached to any Unit. No accessory exterior structures shall be permitted at any Unit or attached to any Unit.

7.15. Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant reserves the right, by and with the mutual written consent of the Owner of such Unit, to change the building line restriction set forth in the instrument, provided however, that such changes shall not be in violation of any provisions of the Zoning provisions of the appropriate governmental authority.

7.16. Above Ground Pools. No above or below ground pools on any Units shall be erected or installed on a Unit.

See Amendments 7-2007

7.17. Architectural Requirements. The driveway and sidewalks on a Unit shall be constructed of concrete. Specification will be provided to each owner by the Association. Units shall be planted with standard size plantings along the front of the dwelling to screen the foundation. No above ground storage tanks shall be erected or installed on a Unit. No building shall be erected, placed, or altered until the construction plans and specifications and a plan showing the location of the structure have been approved by the Declarant, its successors or assigns, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. There will be a common post box for the community. No erected dwelling Unit shall have an exterior siding of concrete block or firebrick. Any dwelling Unit shall have stucco or stone on front, rear and all sides of the dwelling. No garage, carport, room, building, utility shed or similar structure customarily incident to the residential use shall be constructed. There are to be no outside buildings associated with the Unit.

7.18. Removal of Obstructions.

a. The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including,

but not limited to, trees, shrubs, fences) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

b. The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Unit Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way, and such Unit Owner shall indemnify and save the Declarant, its successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way. In the event that the Unit Owner responsible for such charge or liability as aforesaid fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have a lien against his Unit thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Unit or dwelling unit.

7.19. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Project as a residential community for those are 55 and older and for the sale, rental or other disposition of Units in the Project. In the event of any conflict between a Builder and Declarant, the Declarant will be the prevailing party. The rights of Declarant or Builder, their agents, employees and contractors shall include, without limitation:

- (A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Project acts deemed necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Units;
- (B) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Units; and
- (C) The right to use Units and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Project.

Amendment of this section shall require (i) if a two-class voting structure is in effect, the vote or written consent of seventy-five percent (75%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of seventy-five percent (75%) of the total Voting Power of the Association. Further, no amendment of this section can be made without the written approval of Declarant and Builder.

7.20. Right to Enter. Any governmental agency, including, but not limited to the County, its agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

ARTICLE 8

MEMBERSHIP AND VOTING RIGHTS

8.01. **Governing Body.** The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Project, as provided by this Declaration and the Bylaws.

8.02. **Membership.** Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Unit.

8.03. **Voting.** The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of Declarant and Builder; provided, however, that Declarant and Builder shall become Class A Members when their Class B membership ceases as provided hereinafter. Class A Members shall be entitled to one (1) vote for each Unit owned. When more than one person holds an ownership interest in any Unit; all such persons shall be Members, but no more than one vote shall be cast with respect to any Unit. The vote for any such Unit shall be exercised as the Members holding an interest in such Unit determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Unit shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Unit.

Class B. Declarant and Builder shall be Class B Members. Builder shall be entitled to three (3) votes for each planned Units. Declarant shall be entitled to three (3) votes for each Unit owned including each Unit as shown on the Master Plan of the Project dated _____, 20__ a copy of which is on file in the office of Declarant. Declarant's and Builder's Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(1) when the total number of votes of the Class A Members equals the total number of votes of the Class B Members; provided, that the Class B membership shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B membership to Class A membership hereunder, additional land containing Units is annexed to the existing property; or

(2) on December 31, 2018; or

(3) when Declarant, at its option, so determines.

8.04. **Commencement of Voting Rights.** Voting rights attributable to an ownership interest shall not vest until the assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to amendments to this Declaration pursuant to Section 17.08.

8.05. **Declarant's and Builder's Voting Rights.** No requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant or Builder for action to be taken by the Association is intended to preclude Declarant or Builder from casting votes attributable to Units owned by Declarant or Builder.

8.06. **Control by Declarant.** Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or

officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 concerning the termination of the Class B Member status of Declarant or Builder or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant and Builder if they then own one or more Units; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors, which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association, which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Unit vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

ARTICLE 9

COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Declarant, for each completed Unit owned by Declarant, hereby covenants to pay, and every Owner of any Unit (including Builder) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. No assessment shall be due except with respect to Units shown on a recorded subdivision plat. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration, shall be and become a lien upon the Unit assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

- (A) The amount of such assessment and such other charges thereon as may be authorized by this Declaration;
- (B) A description of the Unit against which the same has been assessed; and
- (C) The name of the record owner of the Unit assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted by law. The Association shall have power to purchase the Unit at a foreclosure sale and to hold, lease, mortgage and convey the same.

9.02. Personal Obligation. Each regular annual or special assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Unit at the time such assessment was levied. If more than one person or entity held an ownership interest in the Unit at such time; the personal obligation to pay such assessment or installment respecting such Unit shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his Unit.

9.03. Use of Assessments. Regular annual or special assessments paid by

Declarant and other Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of a majority of the Voting Power of (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

9.05. Regular Assessments. Beginning January 1, 2007 the regular annual assessment for each completed Unit for the first assessment year shall be \$ 750.00 per Unit owned by an Owner (not including Declarant or Builder). Effective January 1, 2008, the regular annual assessment for each Unit shall be \$1500.00 per Unit owned by an Owner (not including Declarant or Builder).

The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least fifteen (15) days in advance of each assessment year; provided, however, that the ratio of the assessment established for Units owned by Owners (not including Declarant or Builder) to the assessment established for Units owned by Declarant or Builder shall always be three (3) to one (1), prorated for partial years due to ownership changes during the year, and further provided that the Board may not impose a regular annual assessment, which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the Voting Power of the Association. Written notice of the regular annual assessment shall be sent to every Owner who is not present at the time the regular annual assessment is so fixed. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Unit have been paid and, if not, the amount due.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the

Common Area; provided, however, any such assessment shall be in the ratio of three (3) to one (1) for Units owned by Owners (not including Declarant or Builder) and Declarant or Builder, respectively, as provided in Section 9.05 above, and further provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Unit or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. Except as otherwise provided in this Declaration and except for the reduced assessments on Units owned by Declarant or Builder all regular and special assessments shall be levied equally against all Owners.

9.09. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Units at the discretion of the Board, but not later than January 1, 2007. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Units within each Phase of the Project, which is annexed in accordance with the provisions of Article 16 below, shall commence on the first day of the month next following the conveyance of the first Unit with a dwelling to a purchaser, other than a successor Declarant, for use as a residence.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments; Fines. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.09 shall not exceed the following rates computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

(A) On so much of the outstanding balance as does not exceed one thousand dollars (\$1,000), one and one-half percent (1.50%).

(B) If the outstanding balance is more than one thousand dollars (\$1,000), one percent (1%) on the excess over one thousand dollars (\$1,000) of the outstanding balance.

(C) If the late charge so computed is less than ten dollars (\$10) for any month, ten dollars (\$10).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. All late charges shall be non-cumulative. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

ARTICLE 10

INSURANCE

10.01. Duty to Maintain Insurance.

(A) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Project. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(B) Each Owner shall maintain casualty and personal liability insurance pertaining to his Unit, in such form and in such amounts as the Rules and Regulations may require.

(C) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver can be obtained, unless otherwise provided in the Rules and Regulations.

(D) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance meeting the insurance requirements for planned unit development projects established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Unit within the Project, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association.

10.02. Proceeds of Insurance. The proceeds of casualty insurance carried by the Association shall be paid to and held by the Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration.

Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.01. Damage to Units. Restoration and repair of damage to any Unit and improvements thereon shall be made by and at the expense of the Owner thereof.

11.02. Repair, Restoration, Reconstruction. If damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and apply any proceeds of insurance as received toward cost of such repair, restoration or reconstruction. The difference, if any, between the insurance proceeds payable by reason of such damage and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Board equally against all Owners.

ARTICLE 12

EMINENT DOMAIN

12.01. Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a “taking”), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as the court may determine. A condemnation award, which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner’s share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all Owners.

ARTICLE 13

[Article 13 Intentionally Deleted]

ARTICLE 14

ARCHITECTURAL CONTROL

14.01. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized architectural control committee to reconstruct or repair his residence in accordance with revisions in the plans and specifications. The Board or said committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

ARTICLE 15

MORTGAGEE PROTECTION

15.01. Interpretation. In the event any provision of this Article 15 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 15 shall control.

15.02. Notices. Any Mortgagee of any Unit, by written notice to the Association setting forth the Unit encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (i) any default which is outstanding for sixty (60) days or longer by the Owner of such Unit in the performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (ii) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Unit, including the improvements located thereon, and (iii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Unit or portion thereof.

15.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours; and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

15.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Unit or improvements to a Unit or any part of the Common Area, no provision of any document establishing the Project shall entitle the Owner of a Unit or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

15.05. Condemnation Rights. If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Project shall entitle the Owner of a Unit or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

15.06. Right of First Refusal. Any right given by an Owner of a Unit to any third person to purchase such Unit before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Unit pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

15.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage, which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Unit pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against the Unit which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Unit; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Units for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Unit; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Unit shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Unit from a duly recorded lien for any such prior unpaid assessment.

15.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

15.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Project, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon sixty (60) days' written notice, without payment of a termination fee.

ARTICLE 16

ANNEXATION

16.01. Right to Annex. Declarant shall have the right to annex to Phase 1 and thereby bring within the scheme of this Declaration and subject to the jurisdiction of the Association part or all of the Additional Land provided that such property is developed for single family detached residential purposes or single-family residential townhomes with deeded Units and provided further, the total number of Units developed on Phase I and the Additional Land does not exceed 165. Declarant is under no obligation to annex the Additional Land and may elect to develop the Additional Land for single family or multifamily purposes, including apartments, not as a part of the Project. Annexation of additional property may be accomplished in Phases.

16.02. Procedure for Annexation. Any annexation shall be made by recordation in the office of the Register of Deeds for the county wherein the property is located of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the Phase of the Project being annexed. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation in the applicable public registry of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles and Bylaws.

16.03. Annexed Property. Each Owner of a Unit in an annexed Phase automatically shall be a Member of the Association and such Owners and annexed real property shall be subject to assessment by the Association for the benefit of the Project or any part thereof. Assessments of Units in an annexed Phase shall commence upon the last to occur of: (a) commencement of regular annual assessments for the Project, and (b) the first day of the month next following the first conveyance of a Unit in such Phase to a purchaser, as provided in Section 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Project shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Project may be expended by the Association anywhere in the Project without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Project and any Phase thereof and shall have use and enjoyment of any recreational facilities and other amenities contained within the Common Area throughout the Project, provided that any

such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.01. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Units or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefore or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

17.02. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidity or partial invalidity of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

17.03. Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner: to the address of his Unit; (ii) if to Declarant, to Riverwalk of Hayesville, LLC, 68 Winchester Cove Road, Hayesville, 28904 and (iii) if to the Association, to the address of the Project. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

17.04. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

17.05. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

17.06. Equal Opportunity Housing. This Project provides equal opportunity housing. Each Unit sold shall be sold without regard to the race creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser. This community should serve the adults age fifty-five and older.

17.07. Exhibits. Exhibits A and B which are attached to this Declaration, incorporated herein and made a part hereof by this reference.

17.08. Amendments. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Member or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Unit or of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Unit.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association; provided, however, that the percentage of the Voting Power (of each class of Members, of the Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Unit; (ix) interests in the Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit; (xii) any provisions which are for the express benefit of Mortgagees; or (xiii) any other material amendment shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association.

Any instrument amending this Declaration must contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.

17.09. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

17.10. Additional Rights Reserved By Declarant.

a. The declarant reserves the right to remove portions of the property as described in Exhibit A from the effect of this Declaration. Any Property so removed may be used for residential purposes only and any structure erected thereon must be of similar architectural design and harmonious with the then existing structures within the townhouse community, Appropriate governmental authority must be obtained by the Declarant prior to the removal of any portion of the property described in the attached Schedule A.

b. The Declarant specifically reserves the right to extend any of the streets and/or utilities shown on the recorded plat of Riverwalk of Hayesville into any adjoining property which may be owned nor or hereafter acquired by the Declarant or its assignees. Any such use shall carry with it the restriction and condition that those persons using said streets outside of the boundaries of Riverwalk of Hayesville shall be responsible to the Association for their pro-rata share of the maintenance and upkeep of said streets and /or utilities.

c. Declarant reserves the right to modify or change existing Townhouses to include, but shall not be limited to, the addition of decks, porches, patios and other related structure, and to convey said additions or modifications as part of the Townhouse Unit(s) either at the time of sale to a purchaser or after said Townhouse has been conveyed to a purchaser. This right shall extend to the Declarant for so long as the Declarant retains ownership of any of the Units and/or the Common Area.

IN WITNESS WHEREOF, the Declarants have set their hand in seal this the _____ day of _____, 2006.

RIVERWALK OF HAYESVILLE, LLC,
a North Carolina Limited Liability Company

By: _____ (SEAL)
TIGHE K. WHITE, Member/Manager

By: _____ (SEAL)
ROBERT A. ALWINE,
Member/Manager

By: _____ (SEAL)
GARLAND HOGSED,
Member/Manager

_____ County, North Carolina

I certify that the following person (s) personally appeared before me this day each known personally to me or presented appropriate identification and each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

TIGHE K. WHITE, Member/Manager; GARLAND HOGSED, Member/Manager; and
ROBERT A. ALWINE, Member/Manager of RIVERWALK OF HAYESVILLE, LLC

Date: _____

Notary Public
Printed or Type Name of Notary Public:

(Official Seal)

My Commission Expires:
